

9
ORIGINAL

BEFORE THE
Federal Communications Commission

WASHINGTON, D. C.

RECEIVED

JUN 11 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Implementation of the
Telecommunications Act of 1996:

Telecommunications Carriers' Use
Of Customer Proprietary Network
Information And Other Customer
Information

DOCKET FILE COPY ORIGINAL

CC Docket No. 96-115

COMMENTS OF VIRGIN ISLANDS TELEPHONE CORPORATION

Jonathan E. Canis
Reed Smith Shaw & McClay
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005
(202) 414-9483

June 11, 1996

Its Attorneys

No. of Copies rec'd
USA: 8 CDE

026

SUMMARY

The Virgin Islands Telephone Corporation submits these comments on the proper interpretation and application of Section 222(e) regarding the provision of subscriber list information by telecommunications carriers that provide local exchange telephone services.

The Commission asks for comments on the statutory requirement that certain carriers provide subscriber list data on a timely basis. Section 222(e) requires such data to be provided on a timely basis "for the purpose of publishing directories." Section 222(e) does not require carriers to provide such information at all, let alone on a "timely" basis, for any other purpose, including the selling of advertising in Yellow Pages (or combined White Pages and Yellow Pages) directories. Whether and on what terms a carrier provides subscriber list data to an entity for purposes other than "publishing directories" are matters governed by negotiation between the parties.

Also, the Commission should clarify that Section 222(e) requires a carrier to provide subscriber list data no more than once for each directory (or edition thereof) that is published. The statute permits but does not require a carrier to provide a publishing company with updated information at six-month, one-month, one-week or one-day intervals. Section 222(e) does not transform local carriers into the equivalent of marketing arms for directory publishers.

Lastly, parties who believe a local carrier has not complied with Section 222(e) should seek redress in the first

instance before the state public service commission. The provision of subscriber list data and the publication of directories are inherently local activities which are more properly subject to the expertise and jurisdiction of state authorities. Section 208 does not apply to complaints against carriers for an alleged failure to comply with Section 222(e). Section 208 applies to carriers only in their capacity as "common carriers," and the provision of subscriber list information in compliance with Section 222(e) is not a common carrier activity.

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C.

In the Matter of)	
)	
Implementation of the)	
Telecommunications Act of 1996:)	
)	CC Docket No. 96-115
Telecommunications Carriers' Use)	
Of Customer Proprietary Network)	
Information And Other Customer)	
Information)	

TO: The Commission

COMMENTS OF VIRGIN ISLANDS TELEPHONE CORPORATION

The Virgin Islands Telephone Corporation ("Vitelco"), by its attorneys, hereby submits these comments in response to the Commission's Notice of Proposed Rulemaking ["Notice"] (FCC 96-221) released in the above-captioned proceeding on May 17, 1996. Vitelco is a provider of telecommunications services in the United States Virgin Islands. These comments address a single issue, namely, the proper interpretation and implementation of Section 222(e) regarding the provision of subscriber list data by telecommunications carriers that provide telephone exchange service. See Notice at paras. 43-46.

The Notice solicits comments on the statutory requirement that local exchange carriers must provide subscriber list information on a "timely" basis. The Commission should recognize that Section 222(e) requires carriers to provide such information on a timely basis "for the purpose of publishing directories." 47 U.S.C. § 222(e) (emphasis supplied). Based upon those plain words, the Commission should interpret this provision to require carriers to provide such data in time for

the requesting party to publish a directory. When a party requests subscriber list data earlier than is necessary to publish a directory, that request is governed by negotiations between the parties, not by the timeliness requirement in Section 222(e). For example, a publishing company may seek subscriber list data many months before it goes to press in order to sell advertising in its Yellow Pages. Whether and on what terms the carrier provides such information to publishing companies are governed by private negotiations between the parties, not by Section 222(e).

Based upon the words chosen by Congress, Section 222(e) is limited to ensuring that a White Pages subscriber listing is available to third parties so they may publish that listing in their own directories. While parties may use such data in publishing Yellow Pages directories (or combined White Pages and Yellow Pages directories), Congress did not intend to burden local exchange carriers with the obligation to provide ongoing assistance to publishers in marketing their Yellow Pages products. The burdens of providing such assistance are particularly great for smaller carriers like Vitelco.

Moreover, unlike the White Pages listings, which must be accurate and complete to be useful for a directory and which cannot readily be acquired from a source other than the local exchange provider, publishers are not dependent upon subscriber list data (or updates thereto) from the local exchange provider to market their Yellow Pages products. Publishers can market Yellow Pages advertising through direct mailings as well as the

print, radio and television media. Publishers also have public sources of information to identify new businesses since the last published directory listing, such as the local Chamber of Commerce, new business licenses, and advertisements by new businesses. With regard to a business who has relocated, often it is able to keep its previous telephone number, and if not it can and usually does direct the local carrier to provide a recorded message to parties calling its old telephone number informing the caller of the new telephone number. In short, unlike White Pages listings, directory publishers do not require assistance from local exchange carriers to sell advertising in their Yellow Pages. In Section 222(e), Congress did not intend to transform local carriers into the equivalent of marketing arms for directory publishers. The Commission should make clear that whether and to what extent a local carrier provides such assistance to directory publishers are matters of private negotiation, not statutory requirement.

Along the same lines, the Commission should clarify that Section 222(e) requires a carrier to provide subscriber list information no more than once for each directory (or edition thereof) that is published. For example, if a company publishes a directory once a year, then local carriers must provide that company with subscriber list information in time to publish according to that schedule, provided it is reasonable. The statute permits but does not require a carrier to provide the publishing company with updated information at six-month, one-month, one-week or one-day intervals. While a publishing company

may desire periodic updates for purposes other than publishing a directory, such as selling advertising for Yellow Pages, the provision of such updates should be left to private negotiations between the parties. Otherwise, publishing companies could impose onerous burdens upon carriers under the guise of Section 222(e) by making unreasonable requests for updated information.

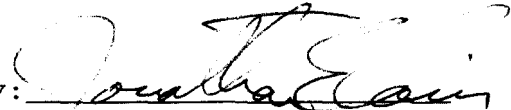
Lastly, the Commission should clarify that parties who believe a carrier has not complied with Section 222(e) should seek redress in the first instance from state public service commissions, not the FCC. The provision of subscriber list information and the publication of directories are traditionally local activities which are more properly subject to the expertise and jurisdiction of state public service commissions. State regulations of directories already exist, such as regulations entitling each subscriber to one White Pages listing. Also, directory revenues may be part of a local exchange carrier's local revenue requirement in states which continue to use that form of regulation. As regards issues concerning timeliness, unbundling, reasonableness and nondiscrimination under Section 222(e), state public service commissions are in the best position to know and address such issues knowledgeably.

At a minimum, the Commission should clarify that Section 208 of the Communications Act is not an appropriate enforcement mechanism for allegations of non-compliance with Section 222(e). Section 208 applies to carriers only in their capacity as "common carriers," 47 U.S.C. § 208(a), which Section 3(h) defines, among other things, as any person engaged as a

"common carrier for hire in interstate or foreign communication by wire or radio" 47 U.S.C. § 153(h). The provision of subscriber list data under Section 222(e) is not a "common carrier" activity, and therefore it should be enforced by state public service commissions, not by the FCC through Section 208 complaints.

Respectfully submitted,

**VIRGIN ISLANDS TELEPHONE
CORPORATION**

By: 
Jonathan E. Canis
Reed Smith Shaw & McClay
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005
(202) 414-9483

June 11, 1996

Its Attorneys

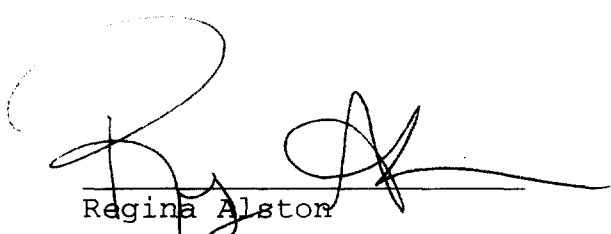
CERTIFICATE OF SERVICE

I, Regina Alston, hereby certify that I have caused a copy of the foregoing **"Comments of Virgin Islands Telephone Corporation"** to be served on this 11th day of June, 1996 by U.S. first-class, postage prepaid, to the following:

Janice M. Myles
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Rm 544
Washington, D.C. 20554

Regina Keeney, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Rm 500
Washington, D.C. 20554

ITS, Inc.
1919 M Street, N.W.
Room 246
Washington, D.C. 20554


Regina Alston